

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**





# TRANSCRIPT OF RECORD.

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## Court of Appeals, District of Columbia

OCTOBER TERM, 1910.

No. 2204.

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763

NATHANIEL M. AMBROSE, APPELLANT,

*vs.*

JAMES H. HAYES, JR.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF  
COLUMBIA.

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FILED AUGUST 13, 1910.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1910.

No. 2204.

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vs.

JAMES H. HAYES, JR., APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF  
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# In the Court of Appeals of the District of Columbia.

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No. 2204.

NATHANIEL M. AMBROSE, Appellant,  
vs.  
JAMES H. HAYES, JR.

---

*a* Supreme Court of the District of Columbia.

At Law. No. 51072.

JAMES HAYES, JR., Plaintiff,  
vs.  
NATHANIEL M. AMBROSE, Defendant.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 *Declaration.*

Filed November 2, 1908.

In the Supreme Court of the District of Columbia, the — Day of October, A. D. 1908.

At Law. No. 51072.

JAMES H. HAYES, JR., Plaintiff,  
vs.  
NATHANIEL M. AMBROSE, Defendant.

The plaintiff, James H. Hayes, Jr., sues the defendant, Nathaniel M. Ambrose, for money payable by the defendant to the plaintiff, for that, on the 10th day of April, A. D. 1908, the plaintiff, by the designation of James Hayes, Jr., attorney for Ephraim Brice and William R. Brice, Executors of the Estate of William Brice, deceased, did by a certain lease or agreement in writing, signed and sealed by the plaintiff by the designation aforesaid, and Myer Stras-

burger and Emma Strasburger, let and rent to the said Myer Strasburger and Emma Strasburger, all that certain hotel and premises known and designated as the Hotel Oriental, situate at Oriental and Vermont Avenues, in the City of Atlantic City, Atlantic County, in the State of New Jersey, for a term beginning on the 10th day of April, A. D. 1908, and expiring on the 1st day of October, A. D. 1908, at the rent or sum of Three Thousand Two Hundred and Fifty Dollars (\$3,250.), to be paid as follows, to-wit: \$300 to be paid at the time of the signing of the said lease or agreement in writing; \$200 on May 1st, 1908; \$300 on June 1st, 1908; \$200 on June 15th, 1908; \$500 on July 15th, 1908; \$500 on August 1st, 1908; \$750 on August 15th, 1908; and \$500 on September 1st, 1908; that as a condition precedent to the aforesaid lease or agreement between the plaintiff and the said Myer Strasburger and Emma Strasburger the plaintiff did require and exact from the said Myer Strasburger and Emma Strasburger that they should furnish to the plaintiff a good and sufficient surety for the punctual payment, among other things, of the said rent reserved and payable as aforesaid in said lease or agreement; that pursuant to said condition precedent and in consideration of the letting and renting to the said Myer Strasburger and Emma Strasburger of the premises hereinbefore described and the sum of One Dollar, the defendant Nathaniel M. Ambrose, on the 17th day of April, 1908, did sign, seal, acknowledge and deliver to the plaintiff a certain bond or written obligation wherein and whereby said defendant became surety for the punctual payment of the rent, to the extent of Fifteen Hundred Dollars, and for the performance of the covenants contained in said lease or agreement hereinbefore mentioned, to be paid and performed by the said Myer Strasburger and Emma Strasburger as therein specified; and in the event of any default or non-performance by the said Myer Strasburger and Emma Strasburger in the payment of said rent or the performance of the covenants contained in said lease or agreement, the defendant by said bond or written obligation promised and agreed to pay to the plaintiff the said rent or arrears thereof to the extent of Fifteen Hundred Dollars, without requiring notice or proof of demand being made for the payment thereof; that by virtue of said lease or agreement between the plaintiff and the said Myer Strasburger and Emma Strasburger the said Myer Strasburger and Emma Strasburger did on the 10th day of April, A. D. 1908, enter upon and take possession of the hotel and premises mentioned in said lease or agreement; that the said Myer Strasburger and Emma Strasburger have wholly neglected and refused to the plaintiff a balance of Twenty Dollars due on the installment of rent amounting to \$200 payable on June 15th, 1908; all of the installment of rent amounting to \$500 payable on June 15th, 1908; all of the installment of rent amounting to \$500 payable on August 1st, 1908; all of the installment amounting to \$750 payable on August 15th, 1908; and all of the installment amounting to \$500 payable on September 1st, 1908; as in said lease and agreement covenanted and agreed to be paid by the said Myer Strasburger and Emma Strasburger on the



respective dates above mentioned; that by virtue and reason of said defaults and breaches on the part of the said Myer Strasburger and Emma Strasburger, the said bond or writing obligatory and the sum of Fifteen Hundred Dollars (\$1,500) mentioned therein, became due and payable by the defendant to the plaintiff; and that the defendant has wholly neglected and refused, and still does neglect and refuse, to pay to the plaintiff the sum of Fifteen Hundred Dollars (\$1500.); and thereby an action has accrued to the plaintiff to demand and have of and from the defendant the said  
4 sum of Fifteen Hundred Dollars (\$1,500.) above demanded.

And the plaintiff claims from the defendant the sum of Fifteen Hundred Dollars, with interest, besides the costs of this suit.

WALTER H. ACKER,  
T. PERCY MYERS,  
*Attorneys for Plaintiff.*

*Notice to Plead.*

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of service hereof; otherwise judgment.

WALTER H. ACKER,  
T. PERCY MYERS,  
*Attorneys for Plaintiff.*

*Affidavit.*

STATE OF NEW JERSEY,  
*County of Atlantic, ss:*

James H. Hayes, Jr., upon oath says: That he is the plaintiff named in the declaration attached hereto, and Nathaniel M. Ambrose is named therein as defendant; that the plaintiff's cause of action against the defendant is grounded upon a certain bond or obligation in writing, signed, sealed, acknowledged and delivered by the defendant to the plaintiff, dated the 17th day of April, A. D. 1908, wherein and whereby the defendant by virtue thereof, in  
5 consideration of the plaintiff's letting and renting to Myer Strasburger and Emma Strasburger certain premises situate and located at Oriental and Vermont Avenues, Atlantic City, State of New Jersey, for the term beginning on the 10th day of April, A. D. 1908, and ending on the 1st day of October, A. D. 1908, for the rent or sum of Three Thousand Two Hundred and Fifty Dollars (\$3,250.), payable as follows, to-wit: \$300 upon the signing of a certain lease or agreement in writing between the plaintiff, by the designation attorney for Ephraim Brice and William R. Brice, Executors of the Estate of William Brice, deceased, and the said Myer Strasburger and Emma Strasburger; \$200 on May 1st, 1908; \$300 on June 1st, 1908; \$200 on June 15th, 1908; \$500 on July 15th, 1908; \$500 on August 1st, 1908; \$750 on August 15th, 1908; and \$500 on September 1st, 1908; and the sum of One Dollar, promised and agreed to pay to the plaintiff a sum not to exceed

Fifteen Hundred Dollars (\$1,500.) as surety in the event that the several installments of rent mentioned and specified in said lease or written agreement bearing date on the 10th day of April, 1908, were not fully and promptly paid to the plaintiff by the said Myer Strasburger and Emma Strasburger on the respective dates in said lease and agreement mentioned when the same should become due and payable; that the said Myer Strasburger and Emma Strasburger did on the 15th day of June, 1908, default in the payment of \$20 of the \$200 due and payable on that date; that on the 15th day of July, 1908, default was made in the payment of the \$500 payable on that date; that on the 1st day of August, 1908, default was made in the payment of the \$500 payable on that date; that on the 15th day of August, 1908, default was made in the payment of the \$750 payable on that date; and that on the 1st day of September, 1908, default was made in the payment of the \$500 due and payable on that date; that none of the said instalments of rent, amounting to \$2,270, have been paid by the said Myer Strasburger and Emma Strasburger, or either of them; that a true copy of the said lease or agreement and the said bond or written obligation is attached hereto; that there is now justly due and owing by the defendant to the plaintiff by reason of the premises the sum of Fifteen Hundred Dollars (\$1,500), exclusive of set-offs and just grounds of defense.

JAMES H. HAYES, JR.

Subscribed and sworn to before me this 26th day of October, 1908.

[SEAL.]

EDWARD R. DONNELLY,  
*Notary Public of New Jersey.*

STATE OF NEW JERSEY,  
*County of Atlantic, ss:*

I, Edward S. Lee, Clerk of the County of Atlantic and Clerk of the Court of Common Pleas, of said County, said Court being a Court of Record, having a common seal, being the officer authorized by the laws of the State of New Jersey to make the following  
7 certificate, do certify, That Edward R. Donnelly, Esquire, whose name is subscribed to the foregoing certificate, was at the time of taking such affidavit a notary public of the State of New Jersey, residing in the county aforesaid, duly commissioned and qualified to administer oaths and affirmations and to all whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere, and that I am well acquainted with the handwriting of the said notary public and verily believe the signature thereto is genuine, and I further certify that the said Instrument is executed and acknowledged in conformity with the Laws of the State of New Jersey.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 27th day of October in the year of our Lord one thousand nine hundred and eight.

[SEAL.]

EDWARD S. LEE, *Clerk.*  
ALBERT C. ABBOTT,  
*Deputy Clerk.*



*Particulars of Demand.*

Filed November 2, 1908.

This agreement witnesseth: That James H. Hayes, Jr., attorney for Ephraim Brice and William R. Brice, Executors of the Estate of William Brice, deceased, of the City of Atlantic City, Atlantic County, New Jersey, of the first part, doth hereby let unto Myer Strasburger and Emma Strasburger, both of the City of Atlantic City, Atlantic County, New Jersey, of the second part, all that  
8 certain furnished hotel and premises known and designated as Hotel Oriental, situate at Oriental and Vermont Avenues, Atlantic City, New Jersey, from April Tenth, Nineteen Hundred and eight until October first, 1908, at the rent or sum of Three thousand two hundred and fifty dollars to be paid as follows. \$300 on signing this lease; \$200 on May 1st, 1908; \$300 on June 1st, 1908; \$200 on June 15th, 1908; \$500 on July 15th, 1908; \$500 on August 1st, 1908; \$750 on August 15th, 1908; and \$500 on September 1st, 1908.

And the said parties of the second part doth hereby for themselves, their heirs, executors and administrators, covenant and promise to pay the said party of the first part, or his assigns, the said rent, in the proportions aforesaid; and we the said Myer Strasburger and Emma Strasburger, our executors and administrators shall and will not at any time during the said term, assign this lease, let or demise, or in any manner dispose of the hereby demised premises, or any part thereof, for all or any part of the term hereby granted, to any person or persons whatsoever, nor occupy or use the same in any manner than as a Hotel or Boarding House without the consent or approbation in writing of the said party of the First part, or assigns, first had for that purpose; and at the expiration of the said term yield up and surrender the possession of the said premises, with appurtenances, unto the said party of the first part or assigns, in the same good order and condition as the same now are, reasonable wear and tear thereof, and accidents happening by fire or other casualties excepted.

9 And the said Myer Strasburger and Emma Strasburger for themselves, their executors administrators, hereby agrees that all personal property on the premises and belonging to the said Myer Strasburger and Emma Strasburger or either of them shall be liable to distress and also all personal property, if removed therefrom, shall for thirty days after such removal be liable to distress, and may be distrained and soled for rent in arrears the said Myer Strasburger and Emma Strasburger, hereby waiving all right to the benefit of any laws now made or hereafter to be made, exempting personal property from levy and sale for rent in arrears.

And it is further understood and agreed that if any rents shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the party of the first part or assigns, without notice and without any demand for said



rent to re-enter the said premises and remove all persons therefrom, or to proceed by action for the recovery of the possession thereof, or otherwise however.

In witness whereof, the said James H. Hayes, Jr., attorney for Ephraim Brice and William Brice, Executors for the Estate of William Brice, deceased and Myer Strasburger and Emma Strasburger have hereunto set their hands and seals the tenth day of April, A. D. Nineteen hundred and eight.

JAMES H. HAYES, JR., [SEAL.]  
*Attorney for Ephraim Brice and William B.  
 Brice, Executors of the Estate of William  
 Brice, Deceased.*

MYER STRASBURGER. [SEAL.]  
 EMMA STRASBURGER. [SEAL.]

Signed, sealed and delivered in the presence of  
 M. WOLF.

10

*Particulars of Demand.*

Filed November 2, 1908.

In Consideration of the letting of the premises above described and for the sum of One Dollars, I, Nathaniel M. Ambrose of the City of Washington, D. C., do hereby become surety for the punctual payment of the rent, to the extent of Fifteen hundred Dollars and for the performance of the covenants within and above mentioned in said agreement, to be paid and performed by Myer Strasburger and Emma Strasburger as therein specified; and if default shall at any time be made therein; I do hereby promise and agree to pay unto the said party of the first part in said agreement named, the said rent or any arrears thereof, to the extent of Fifteen hundred dollars, that may be due and full- satisfy the conditions of the said agreement and all damages that may accrue by reason of the non-fulfillment thereof without requiring notice or proof of demand being made, but it is understood that my liability in case of the non-fulfillment of the covenants of said agreement by the said Myer Strasburger and Emma Strasburger shall in no event exceed the sum of Fifteen hundred Dollars.

Done under my hand and seal the 17th day of April, A. D. Nineteen hundred and eight.

N. M. AMBROSE. [SEAL.]

Signed, sealed and delivered in the presence of  
 JAS. N. FITZPATRICK.

11

DISTRICT OF COLUMBIA,  
*County of Washington, ss:*

Be it remembered, that on this 17th day of April, A. D. Nineteen hundred and eight personally appeared before me N. M. Ambrose who I am satisfied is the person who signed and executed



the foregoing agreement, and I having first made known to him the contents thereof he did acknowledge that he signed, sealed and delivered the same as his voluntary act and deed. All of which is hereby certified.

[NOTARIAL SEAL.]

JAS. N. FITZPATRICK,  
*Notary Public.*

DISTRICT OF COLUMBIA,  
*County of Washington, ss:*

N. M. Ambrose of full age being duly sworn according to law on his oath says that he is a freeholder of Real Estate in the City of Washington, District of Columbia and that he is worth above all encumbrances the sum of Fifteen hundred dollars.

N. M. AMBROSE.

Sworn and subscribed to before me this 17th day of April, A. D. Nineteen hundred and eight.

[NOTARIAL SEAL.]

JAS. N. FITZPATRICK,  
*Notary Public.*

12

*Pleas.*

Filed December 11, 1908.

\* \* \* \* \*

Law. No. 51072.

JAMES H. HAYES, JR., Plaintiff,  
vs.  
NATHANIEL M. AMBROSE, Defendant.

The defendant for pleas to the declaration in this action says:

1. That he never was indebted as alleged.
2. That after the execution of the writing sued on the plaintiff entered into an agreement with the lessees named in said paper whereby for a valuable consideration he extended the time for payments of the several installments of rent reserved in said lease referred to in the declaration in this action for a definite time which extension was made without any notice to or consent by the defendant and thereby the defendant was wholly discharged, from liability under the agreement sued on.

JOHN RIDOUT,  
DAVID ROTHSCHILD,  
*Att'ys for Defendant.*

13

*Affidavit.*

Filed December 11, 1908.

\* \* \* \* \*

DISTRICT OF COLUMBIA, ss:

I, Nathaniel M. Ambrose, on oath say I am the defendant named in the above entitled cause. I deny that I am indebted to the plaintiff in the amount claimed in the declaration or any other sum whatever. The grounds of my defense are as follows:

I am informed and believe and expect to prove by competent testimony at the trial of this action that after the commencement of the lease set forth in the papers sued on in this action the lessees made default in payment of certain installments of rent provided in said lease and were unable to make payments of installments thereafter to mature; that said lessees informed the plaintiff of their inability to make payments in accordance with the terms of the lease and thereupon in consideration of a bonus or payment agreed by the lessees to be paid to the said lessor and plaintiff herein the said plaintiff agreed to definitely extend the time within which payments under said lease might be made by said lessees. And affiant says of his own knowledge that he never was advised or informed in any wise of this extension of time and never in any wise consented to it and he says by such extension of time this affiant's rights and remedies were seriously impaired because he says he was not informed of the defaults of said lessees and of said extension of  
 14 time until after the termination of said lease and after the said lessees had been allowed by the lessor to remove from the premises taking with them their furniture upon which said plaintiff made no effort to realize any part of the unpaid rent.

Affiant further says that his rights and remedies have by reason of said extension of time and omission to notify him of the lessees' default been further impaired and complicated by the fact of the death of one of said lessees and one of the principals upon the paper sued on in this case.

NATHANIEL M. AMBROSE.

Subscribed and sworn to before me this 11th day of December,  
 A. D. 1908.

[SEAL.]

THEODORE BLOCK,  
*Notary Public, D. C.*

*Demurrer.*

Filed December 31, 1908.

\* \* \* \* \*

Now comes the plaintiff by Walter H. Acker and T. Percy Myers, his attorneys, and for demurrer to the first and second pleas of the defendant filed to the declaration herein says: that each and both of said pleas are bad in substance.



The matters of law to be argued are:

First. The first plea is bad in substance in that it is not a proper plea in an action on a bond or specialty.

15 Second. The second plea is bad in that it avers but two conclusions of law and does not aver the necessary facts to constitute a defence at law.

WALTER H. ACKER,  
T. PERCY MYERS,  
*Attorneys for Plaintiff.*

WASHINGTON, D. C., *December 30th, 1908.*

To Messrs. John Ridout and David Rothschild, Attorneys for Defendant:

Please take notice that we shall calendar the above demurrer for hearing on Friday, January 8th, 1909.

WALTER H. ACKER,  
T. PERCY MYERS,  
*Attorneys for Plaintiff.*

Service acknowledged Dec. 30th, 1908.

JNO. RIDOUT,  
*For Def't.*

Supreme Court of the District of Columbia.

FRIDAY, *January 22d, 1909.*

Session resumed pursuant to adjournment, Mr. Justice Stafford presiding.

\* \* \* \* \*

Upon hearing the plaintiff's demurrer to the first and second pleas of the defendant, it is ordered that said demurrer be, and the same is hereby sustained, with leave to defendant to amend said pleas within twenty (20) days from this date.

16

*Amended Pleas.*

Filed February 11, 1909.

\* \* \* \* \*

The defendant, by leave of Court, for amended pleas, says:

1st. That he does not owe the plaintiff the amount claimed in the declaration or any other sum whatever.

2nd. That after the execution of the lease referred to in the declaration and after the execution by this defendant of the written obligation referred to in said declaration, and after rent had become due and was unpaid, the plaintiff during the month of June, 1908, entered into an agreement with Myer Strasburger and Emma Strasburger they acting by and through said Emma Stras-

burger, whereby in consideration of the agreement of the said Myer Strasburger and Emma Strasburger with the plaintiff to pay to him a sum of money not less than \$100.00 as a bonus at the close of the hotel season, said bonus to be in addition to the rent, he, the said plaintiff, definitely extended the time for payment of the rent then overdue and of such as should thereafter fall due until after the close of the hotel season, to wit, until after September 15, 1908, which agreement and extension of time was made and given without the knowledge or consent of the defendant.

JOHN RIDOUT,  
*Attorney for Defendant.*

17

*Joinder of Issue.*

Filed February 19, 1909.

\* \* \* \* \*

Now comes the plaintiff, by T. Percy Myers and Walter H. Acker his attorneys, and joins issue upon the two pleas of the defendant filed herein.

T. PERCY MYERS,  
WALTER H. ACKER,  
*Attorneys for Plaintiff.*

*Memorandum.*

May 9, 1910.—Verdict for Pl'ff for \$1500.

Supreme Court of the District of Columbia.

FRIDAY May 27th, 1910.

Session resumed pursuant to adjournment, Hon. Harry M. Clabaugh, Chief Justice, presiding.

\* \* \* \* \*

Upon consideration of the motion for a new trial filed herein, it is ordered that said motion be, and the same is hereby overruled, and judgment on verdict ordered. Wherefore, it is considered that the plaintiff herein, recover of defendant herein the sum of Fifteen Hundred Dollars (\$1500.00) being the money as aforesaid found payable by defendant to plaintiff by reason of the premises, together with interest from this date, and costs of suit to be taxed by the Clerk and have execution thereof. From the foregoing judgment, the defendant by his attorney Mr. John Ridout, in open  
18 court, notes an appeal to the Court of Appeals of the District of Columbia, whereupon, the penalty of a bond to operate as a Supersedeas, is hereby fixed in the sum of Two Thousand Five Hundred Dollars.

*Memorandum.*

June 15, 1910.—Appeal bond approved & filed.



## Supreme Court of the District of Columbia.

FRIDAY, *July 8th*, 1910.

Session resumed pursuant to adjournment, Hon. Wendell P. Stafford, Justice, presiding.

\* \* \* \* \*

Before Chief Justice.

Comes now the defendant by his attorney Mr. John Ridout, and submitting to the Court the Bill of Exceptions, taken at the trial of this cause prays that the same be signed and made of record, nunc pro tunc.

Further upon agreement of attorneys for the respective parties hereto, and for good cause shown, the time within which to file a transcript of the record herein in the Court of Appeals of the District of Columbia, is hereby extended to and including the 15<sup>th</sup> day of August, 1910.

19

*Bill of Exceptions.*

Filed July 28, 1910.

\* \* \* \* \*

Be it remembered that on May 5, 1910, the above-entitled cause came on for trial before Mr. Chief Justice Clabaugh and a Jury.

Whereupon the plaintiff to maintain the issues on his part joined gave evidence tending to prove the execution of the following instruments:

This agreement witnesseth: That James H. Hayes, Jr., attorney for Ephraim Brice and William R. Brice, executors of the estate of William Brice, deceased, of the city of Atlantic City, Atlantic County, New Jersey, of the first part, doth hereby let unto Myer Strasburger and Emma Strasburger, both of the City of Atlantic City, Atlantic County, New Jersey, of the second part, all that certain furnished hotel and premises, known and designated as Hotel Oriental situate at Oriental and Vermont Avenues, Atlantic City, New Jersey, from April Tenth, Nineteen Hundred and eight until October first, 1908, at the rent or sum of Three thousand two hundred and fifty dollars to be paid as follows. \$300 on signing this lease; \$200 on May 1st, 1908; \$300 on June 1st, 1908; \$200 on June 15th, 1908; \$500 on July 15th, 1908; \$500 on August 1st, 1908; \$750 on August 15th, 1908; and \$500 on September 1st, 1908.

And the said parties of the second part doth hereby for themselves their heirs, executors and administrators, covenant and promise to pay the said party of the first part, or his assigns,

20

the said rent, in the proportions aforesaid; and we the said Myer Strasburger and Emma Strasburger, our executors and administrators shall and will not at any time during the said term, assign this lease, let or demise, or in any manner dispose of the

hereby demised premises, or any part thereof, for all or any part of the term hereby granted, to any person or persons whatsoever, nor occupy or use the same in any manner than as a Hotel or Boarding House without the consent or approbation in writing of the said party of the first part, or assigns, first had for that purpose; and at the expiration of the said term yield up and surrender the possession of the said premises, with appurtenances, unto the said party of the first part or assigns, in the same good order and condition as the same now are, reasonable wear and tear thereof, and accidents happening by fire or other casualties excepted.

And the said Myer Strasburger and Emma Strasburger for themselves, their executors, administrators hereby agrees that all personal property on the premises and belonging to the said Myer Strasburger and Emma Strasburger or either of them shall be liable to distress and also all personal property, if removed therefrom, shall for thirty days after such removal be liable to distress, and may be distrained and sold for rent in arrears the said Myer Strasburger and Emma Strasburger, hereby waiving all right to the benefit of any laws now made or hereafter to be made, exempting personal property from levy and sale for rent in arrears.

21 And it is further understood and agreed that if any rents shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the party of the first part or assigns, without notice and without any demand for said rent to re-enter the said premises and remove all persons therefrom, or to proceed by action for the recovery of the possession thereof, or otherwise however.

In witness whereof, the said James H. Hayes, Jr., attorney for Ephraim Brice and William Brice, Executors for the Estate of William Brice, deceased, and Myer Strasburger and Emma Strasburger have hereunto set their hands and seals the tenth day of April, A. D. Nineteen Hundred and eight.

JAMES H. HAYES, JR., [SEAL.]  
*Attorney for Ephraim Brice and William B.*  
*Brice, Executors of the Estate of William*  
*Brice, Deceased.*

MYER STRASBURGER. [SEAL.]  
 EMMA STRASBURGER. [SEAL.]

Signed, sealed and delivered in the presence of  
 M. WOLF.

In consideration of the letting of the premises above described and for the sum of One Dollar, I, Nathaniel M. Ambrose of the City of Washington, D. C., do hereby become surety for the punctual payment of the rent, to the extent of Fifteen Hundred Dollars and for the performance of the covenants within and above mentioned in said agreement, to be paid and performed by Myer Strasburger and Emma Strasburger as therein specified; and if default shall at any time be made therein; I do hereby promise and agreed to pay



22 unto the said party of the first part in said agreement named, the said rent or any arrears thereof, to the extent of Fifteen Hundred Dollars, that may be due and full- satisfy the conditions of the said agreement and all damages that may accrue by reason of the non-fulfillment thereof without requiring notice or proof of demand being made, but it is understood that my liability in case of the non fulfillment *thereof without requiring notice or proof of demand being made, but it is understood that my liability in case of non fulfillment* of the covenants of said agreement by the said Myer Strasburger and Emma Strasburger shall in no event exceed the sum of Fifteen Hundred Dollars.

Done under my hand and seal the 17th day of April, A. D. Nineteen hundred and eight.

N. M. AMBROSE. [SEAL.]

Signed, sealed and delivered in —  
JAS. N. FITZPATRICK.

Whereupon plaintiff offered in evidence the said instruments.

To the offer of the paper signed by Nathaniel M. Ambrose counsel for the defendant objected on the ground that the undertaking therein set forth was in the conjunctive and that the averment of the declaration was not broad enough in respect of alleged defaults to permit of the introduction of the said paper.

But the Court overruled the objection and admitted the paper in evidence to which ruling counsel for the defendant then and there excepted.

The said paper was then read to the jury.

23 Thereupon the plaintiff gave evidence tending to prove that default had been made by the lessees named in the lease given in evidence in the payment of installments of rent aggregating more than \$2000, no part of which has been paid either by the Strasburgers or the defendant.

And thereupon the plaintiff rested.

Thereupon the defendant gave evidence by MYER STRASBURGER tending to prove that the lessees named in the lease were in possession of the hotel therein described at the date of the execution of the lease and that after its date they remained in possssion under the lease.

That the first payment made by the lessees under the lease was \$200, that about two weeks thereafter another payment was made. This payment was made under an agreement made when the first payment of \$200 was paid, that the other \$100 should be paid within a few days, that later on witness and his wife called on the plaintiff and paid him \$75 on account. At this time witness' wife said to Mr. Hayes that "this is the best we can do at the time" we have got \$75 instead of \$100 and will pay it to you and we want you to be lenient in this matter. We will later on pay you under the lease the amount of this lease and we will pay you more than the lease, we will pay you a bonus on this. Mr. Hayes said "What do you mean by a bonus?" She said we will pay you more than

this, probably \$250. feeling sure that we are going to have a satisfactory season, we will pay you just as much as we can over and above this lease. Later on we made the best payments that we could. The season was backward and we were backward.

Thereupon the witness was asked the following questions: and gave the following answers:

24 Q. Was there any amount named as a bonus? A. A specific amount of \$250 or more if the season justified it. It depended entirely on how well we might do for we were sanguine that we were going to do well and thought that we could make it right with Mr. Hayes for his indulgence.

Q. What did Mr. Hayes say to that? A. Mr. Hayes was perfectly agreeable to that.

Witness further testified that he had been engaged in the hotel business in Atlantic City for two years and that in the hotel business there the word "season" would probably mean until about the 15th of September, the real summer season would be from July 1st or about July 1st until September 15th.

It was admitted by counsel for the plaintiff that the largest payment made at one time was \$200. and payments were frequently as small as \$25., that in no instance were payments made in the amounts or at the times specified in the lease. Witness also testified that no attachment proceedings nor proceedings to recover possession for non-payment of rent were instituted by the plaintiff against the lessees.

Thereupon the defendant called to the stand JAMES H. HAYES, JR., the plaintiff, as a witness, and asked if he ever received a letter from Wm. E. Ambrose relating to the payments due the witness from the Strasburgers under their lease; and the witness testified that to the best of his recollection he never received any communication from Wm. E. Ambrose whatever.

25 Defendant also gave evidence tending to prove that the defendant was never notified of any default by the lessees and that letters written by defendant's counsel to plaintiff, were replied to.

Thereupon the following occurred: the witness, WILLIAM E. AMBROSE, being on the stand on behalf of the defendant:

Q. What were the conditions as nearly as you can give them of your writing each of those letters?

To which question counsel for the plaintiff objected; and the Court sustained the objection; to which ruling of the Court counsel for defendant excepted.

Thereupon the defendant rested.



Thereupon the plaintiff in rebuttal read the testimony of MARGUERITE WHITE, given in a deposition taken de bene case, who gave evidence tending to prove that she was the plaintiff's clerk and bookkeeper in the year 1908. That her name then was Marguerite Wolf, that she witnessed the execution of the papers above referred to. That most of the payments made by the Strasburgers were made to her. That with the exception of the first one or two they were made by Mrs. Strasburger and that after the second payment witness never saw Mrs. Strasburger in the office. Witness heard many conversations between Mrs. Strasburger and the plaintiff in which Mrs. Strasburger frequently asked for indulgence which the plaintiff always refused to give, and said that Mrs. Strasburger must comply with the terms of the lease, and that witness never heard  
26 Mr. Hayes promise any indulgence whatever either to Mr. or Mrs. Strasburger. That witness did not hear all of the conversations which occurred between the Strasburgers and the plaintiff.

The plaintiff testified that he never at any time made any promise of indulgence or the extension of time either to Mr. or Mrs. Strasburgers; that he told them he would insist upon the terms of the lease; that at the time of the second visit of Mr. Strasburger to his office, he told Strasburger that he would have no more dealings with him, that he had shown himself to be unreliable and dishonest, and therefore he must not come to the office again, that his wife was a lady, and that thereafter all payments and transaction- would be with his wife, Mrs. Strasburger. Witness also testified that he made no effort to attach or levy a distress warrant for rent because the hotel was rented furnished, and there was nothing belonging to the Strasburgers on which to levy, and they were financially irresponsible.

The foregoing was all the testimony in the case.

Thereupon the defendant upon all the evidence in the case prayed the Court to separately instruct the jury as follows:

1. That there is no evidence in the case legally sufficient to entitle the plaintiff to recover and the verdict should be in favor of the defendant.

2. If the jury find from all the evidence that without the knowledge and consent of the defendant the plaintiff entered into an agreement with the lessees named in the declaration for a valuable consideration to extend the time for payment of the rent reserved in the lease referred to in said declaration for a definite period then  
27 the plaintiff is not entitled to recover and their verdict should be in favor of the defendant, and if the jury further find that in Atlantic City the word "season" has a definite meaning as a period of time then they are further instructed that an extension until the end of the season would be an extension for a definite period.

3. If the jury find from all the evidence that the plaintiff without the knowledge and consent of defendant at the request of the lessees accepted from them a smaller initial payment and accepted smaller payments and at longer intervals than is provided in the said lease then they are instructed that such action was such a variation of the

terms of the surety's contract as released him from liability thereunder and their verdict should be in favor of the defendant.

But the Court separately refused to grant each of said instructions and rejected them. To each refusal of each of said instructions counsel for the defendant separately excepted.

Thereupon the plaintiff upon all the evidence in the case prayed the Court to instruct the jury to find a verdict for the plaintiff for the amount claimed in the declaration.

To which prayer counsel for the defendant objected, but the Court overruled the objection and granted the prayer to which action of the Court in overruling said objection and granting said prayer counsel for the defendant excepted.

28 Thereupon the Court instructed the jury to find its verdict in favor of the plaintiff for the amount claimed in the declaration which the jury accordingly did.

All the foregoing exceptions were separately noted before the jury retired to consider of their verdict and each of said exceptions was separately noted by the Justice presiding upon his minutes at the time when each exception was reserved.

And counsel for the defendant now prays the Court to sign this bill of exceptions now for then in order that the same may be made matter of record which is accordingly done this 27<sup>th</sup> day of July, 1910, now for then.

HARRY M. CLABAUGH,  
*Chief Justice.*

Settled by agreement.

JOHN RIDOUT,

*For Defendant.*

CLIFFORD V. CHURCH,

*Attorney for Plaintiffs.*

*Directions to Clerk for Preparation of Transcript of Record.*

Filed August 5, 1910.

\* \* \* \* \*

The Clerk will include in the record on appeal in this case the following: Declaration, Pleas, Demurrer to pleas, Order on demurrer, Amended pleas, Joinder, Verdict, Judgment, Appeal Bond, Bill of Exceptions submitted, Bill of exceptions settled, Designation.

WILLIAM E. AMBROSE,  
JOHN RIDOUT,  
*Attorneys for Defendant.*

29 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,  
*District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 28, both inclusive, to be a true and correct transcript of the record





COURT OF APPEALS  
DISTRICT OF COLUMBIA  
FILED

DEC.--6-1910

*Henry W. Hodges*  
*Chas. H.*

IN THE

**Court of Appeals, District of Columbia.**

**OCTOBER TERM, 1910.**

**No. 2204.**

**NATHANIEL M. AMBROSE, APPELLANT,**

*vs.*

**JAMES H. HAYES, JR.**

**BRIEF FOR APPELLANT.**

**JOHN RIDOUT,  
DAVID ROTHSCHILD,  
*Attorneys for Defendant.***

**JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C.**

*J. H. & J. H. DETWEILER*





IN THE  
Court of Appeals, District of Columbia.

OCTOBER TERM, 1910.

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No. 2204.

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NATHANIEL M. AMBROSE, APPELLANT,

*vs.*

JAMES H. HAYES, JR.

---

**BRIEF FOR APPELLANT.**

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**Statement of the Case.**

This is an action to recover upon an instrument, under seal, guaranteeing performance of the covenants of a lease. There was a judgment for plaintiff below under the instruction of the court, and the case is here on appeal from that judgment.



### **Assignments of Error.**

The court below erred as follows:

1. In refusing to grant defendant's first prayer (Record, 15).
2. In refusing to grant defendant's second prayer (Record, 15).
3. In refusing to grant defendant's third prayer (Record, 15).
4. In granting plaintiff's first prayer (Record, 16).
5. In overruling defendant's objection to the admission of the alleged instrument of guaranty (Record, 13).

### **ARGUMENT.**

The assignments of error raise two questions:

As to the construction and admissibility of the instrument sued on;

As to the release of the surety by variation of the contract.

Upon reading the paper it will appear that the undertaking of defendant is in the conjunctive, and that his obligation to pay does not arise until there has been default in *all the covenants* of the lease which is neither averred nor proved.

There is evidence in the record on the part of the defendant which clearly tends to prove such a variation of the lease contract as releases the surety; yet, although this testimony was admitted, the jury was told to disregard it and to find in favor of the plaintiff.

It is respectfully submitted that under settled principles of suretyship the errors complained of are sufficient to justify a reversal of the judgment.

Miller *vs.* Stewart, 9 Wheaton, 681.

The judgment below was therefore wrong and should be reversed.

JOHN RIDOUT,  
DAVID ROTHSCHILD,  
*Attorneys for Defendant.*



COURT OF APPEALS  
DISTRICT OF COLUMBIA  
FILED

DEC. -- 7-1910

*Henry W. Hodges*  
*Atty. Gen.*

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# In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

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**BRIEF FOR THE APPELLEE.**

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T. PERCY MYERS,  
WALTER H. ACKER,  
CLIFFORD V. CHURCH,  
*Attorneys for Appellee.*





# In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1910.

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No. 2204.

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NATHANIEL M. AMBROSE, APPELLANT,

*vs.*

JAMES H. HAYES, JR.

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## **BRIEF FOR THE APPELLEE.**

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### Statement of the Case.

The statement of the case as contained in the appellant's brief is so incomplete that it practically amounts to no statement at all. The material facts are as follows:

James H. Hayes, Jr., leased to Myer and Emma Strasburger, a furnished hotel in Atlantic City, New Jersey, for a period of about six months, at a rental of \$3,250, said rental to be paid in instalments at certain dates as specified in the lease (Rec., p. 5). In consideration of the letting of the said premises, Nathaniel M. Ambrose executed an instrument under seal whereby he became surety for the punctual payment of the rent to the extent of \$1,500, and for the performance of the covenants mentioned in said lease on the part of Myer and Emma Strasburger; and whereby he promised and agreed to pay to James H. Hayes, Jr., any arrears or default in the rent to the extent of \$1,500 (Rec., p. 6). The Strasburgers occupied the

premises; but defaulted in the payment of the rent to over \$2,000. Thereafter James H. Hayes, Jr., entered suit against Nathaniel M. Ambrose for \$1,500, the amount limited in said contract of surety. The plaintiff obtained judgment for \$1,500; and from that judgment the defendant appeals.

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## **ARGUMENT.**

### **I.**

#### **The Court did not Err in Admitting in Evidence the Contract of Surety Signed by Nathaniel M. Ambrose.**

This refers to the sealed contract executed by the defendant, Nathaniel M. Ambrose, upon which this action is based (Rec., pp. 12-13), the defendant contending that the undertaking set forth was in the conjunctive, and that the averment of the declaration was not broad enough in respect of alleged defaults to permit the introduction of said contract. The declaration (Rec., p. 1) sets forth the terms of the lease by which Myer Strasburger and Emma Strasburger rented the property of James H. Hayes, Jr., the appellee; and the declaration also sets forth the exact terms of the contract by which Nathaniel M. Ambrose, the appellant, became the surety for the payment of the rent as specified in the lease, to the extent of \$1,500. Referring to said contract of surety, the declaration (Rec., p. 2), avers:

“That pursuant to said condition precedent and in consideration of the letting and renting to the said Myer Strasburger and Emma Strasburger of the premises hereinbefore described and the sum of one dollar, the defendant, Nathaniel M. Ambrose, on the 17th day of April, 1908, did sign, seal, acknowledge, and deliver to the plaintiff a certain bond or written obligation, wherein and whereby said defendant became surety for the



punctual payment of the rent, to the extent of fifteen hundred dollars, and for the performance of the covenants contained in said lease or agreement hereinbefore mentioned, to be paid and performed by the said Myer Strasburger and Emma Strasburger as therein specified; and in the event of any default or non-performance by the said Myer Strasburger and Emma Strasburger in the payment of said rent or the performance of the covenants contained in said lease or agreement, the defendant by said bond or written obligation promised and agreed to pay to the plaintiff the said rent in arrears thereof to the extent of fifteen hundred dollars, without requiring notice or proof of demand being made for the payment thereof" (Rec., p. 2).

The language of the said contract of surety is as follows:

"In consideration of the letting of the premises above described and for the sum of one dollar I, Nathaniel A. Ambrose, of the city of Washington, D. C., do hereby become surety for the punctual payment of the rent to the extent of fifteen hundred dollars, and for the performance of the covenants within and above mentioned in said agreement, to be paid and performed by Myer Strasburger and Emma Strasburger as therein specified; and if default shall at any time be made therein, I do hereby promise and agree to pay unto the said party of the first part in said agreement named the said rent or any arrears thereof to the extent of fifteen hundred dollars that may be due and full—satisfy the conditions of the said agreement and all damages that may accrue by reason of the non-fulfillment thereof without requiring notice or proof of demand being made; . . ."

(Rec., p. 13).

Thus it is plain that the averment of the declaration and the language of the said contract of surety are in

substance identical; and that the objection to the introduction of said contract in evidence was properly overruled.

## II.

**The Court did not Err in Sustaining the Objection to the Question Propounded by Defendant's Counsel to the Witness, Wm. E. Ambrose.**

The question was:

“What were the conditions as nearly as you can give them of your writing each of those letters?”

referring to letters alleged to have been written to James H. Hayes, Jr., by Wm. E. Ambrose (Rec., p. 14). By examination of the record it appears that no such letters were produced or offered in evidence; that no copies of such letters were offered; and that the contents of such letters were not proven (Rec., p. 14). On the other hand, the witness James H. Hayes, Jr., denied that he ever received any communication from Wm. E. Ambrose (Rec., p. 14), and his testimony was uncontradicted. No such letters having been received, and neither copies nor the contents thereof having been proven, the question as to the circumstances of their alleged writing was entirely irrelevant, and the objection thereto was properly sustained.

## III.

**The Court did not Err in Refusing to Grant the Prayers of the Defendant, and in Granting the Prayers of the Plaintiff to Direct a Verdict for the Plaintiff.**

It is a well settled rule in this jurisdiction, as well as in most other jurisdictions, that it is within the power of the court to direct a verdict in a case where the evi-



dence as a whole would be insufficient to support a contrary verdict; or where the evidence is so conclusive that the court would be compelled to set aside a verdict returned in opposition to it. In the case of *Prigg vs. Lansburgh*, reported in 5 D. C. App., 38, and quoting from *Elliott vs. Chicago, etc., Ry. Co.*, 150 U. S., 245, this court said:

“When the undisputed evidence is so conclusive that the court would be compelled to set aside a verdict returned in opposition to it, it may withdraw the case from the consideration of the jury, and direct a verdict.”

In the case of *Stearm vs. Railroad Co.*, reported in 6 D. C. App., 52, and quoting from *Warthen vs. Hammond*, 5 D. C. App., 167, this court said:

“We regard it as a sound and salutary rule of practice, that a trial court may withdraw a case from the consideration of the jury, or, what amounts to the same thing in our practice, may peremptorily direct a verdict for one or the other party to a suit in clear cases where the evidence, with all just inferences that may be drawn from it, would be insufficient to support a contrary verdict; and a trial court should not hesitate to exercise its right so to do.”

This principle has been applied and upheld in all subsequent decisions of this court.

*Glaria vs. Washington Southern R. Co.*, 30 D. C. App., 563.

*O'Brien vs. Pabst Brewing Co.*, 31 D. C. App., 56.

*Brown vs. Selfridge*, 34 D. C. App., 248-9.

In the case at bar, the suit is on the contract of surety, signed and sealed by Nathaniel M. Ambrose, the defend-

ant. At the trial of the case, the lease of Myer and Emma Strasburger was produced and proven (Rec., pp. 12-13). The said contract of surety was produced and proven (Rec., pp. 12-13). The default aggregating more than \$2,000 in the payment of the rent under the lease, was proven (Rec., p. 13). All of this was uncontradicted by the defendant or his witnesses, and was virtually admitted. As a defense to the action, the defendant in his amended plea avers that after the execution of the said lease and said contract of surety, and after part of the rent had become due and was unpaid, the plaintiff entered into an agreement with the lessees, definitely extending the time for payment of the rent until September 15, 1908, in consideration of the lessees' agreeing to pay him a bonus of not less than \$100 in addition to the rent, such agreement being without the consent of the defendant (Rec., pp. 9-10). Such is the defense the defendant sought to establish. In support of this the defense relied entirely upon the testimony of Myer Strasburger, one of the lessees in the lease. An examination of his testimony shows that it fails utterly to support the allegations of the plea, and that it fails to set forth any defense to this action. In substance Myer Strasburger testified that the first payment made by the lessees was \$200, and that another one was made in about two weeks; that this payment was made under an agreement that the other \$100 should be paid in a few days; that later he and his wife paid \$75 on account; that his wife told Mr. Hayes, the lessor, that this was the best they could do at the time; that they wanted him to be lenient in the matter, and that they would later on pay all the rent, besides a bonus of \$250 if the season justified it (which was declined by the plaintiff); that later on they made the best payments they could; that the season was backward and they were backward; and that in Atlantic City the word "season" probably



meant from July 1st to September 15th (Rec., pp. 13-14).

The appellee submits that if every word of this testimony were true, if it stood alone without any other testimony to contradict or qualify it, it does not support the allegations of the amended plea, nor does it constitute any defense to this action.

First. The testimony is at variance with the amended plea. The amended plea avers that the plaintiff definitely extended the time for the payment of the rent until the end of the season, to-wit: September 15th, in consideration of a bonus of not less than \$100. Strasburger's testimony does not sustain this plea. He says that his wife asked Hayes to be lenient with them, saying that later on they would pay a bonus of \$250 or more, *if the season justified it; it depended on how well they might do*. There is not one word of testimony that the payment of this rent was to be extended to the 15th of September; not one word as to how long the time was extended, or that the payment was to be definitely extended at all. "We want you to be lenient in this matter, and later on we will pay you a bonus if the season justifies it." "It depended entirely on how well we might do." Vague and indefinite as to the extension of time; vague and indefinite as to when the bonus was to be paid; uncertain and problematical as to any bonus at all. This is entirely at variance with the amended plea, which avers that the time for paying the rent was definitely extended until the 15th of September, upon the promise to pay a bonus of \$100 or more.

Second. Not only is this testimony at variance with the amended plea, but it wholly fails to present any fact that would release the defendant from the obligations of his contract of surety. Even if it could be contended that the testimony of Strasburger showed an extension of time by the plaintiff for the payment of the rent, it was not such an extension that would release the defend-

ant from his contract. In order to release a surety for the payment of money, on the ground that the time for payment had been extended by the creditor, it must be not only upon a valuable consideration, but the extension must be for a fixed and definite period. In the case of *Clark vs. Gerstley*, 26 D. C. App., 208, this court said:

“However this may be as a general rule applicable to all cases, it is well settled that the plea must at least show that the extension of payment has been agreed upon, in a way binding upon the principal, for a fixed and definite time.”

This case was carried to the Supreme Court of the United States and was affirmed by that court, as reported in 204 U. S., 504. In the case at bar, the amended plea is definite enough to cover this rule, but the evidence in support of the plea is entirely insufficient. The Supreme Court of the United States said in the case of *Guaranty Co. vs. Press Brick Co.*, 191 U. S., 426:

“We are remitted to the naked proposition whether the giving of a customary credit, with no evidence of loss thereby occasioned, is sufficient to discharge the surety. We find no difficulty in answering the question in the negative.

“It is settled by our decisions that an extension by the principal, which will release and discharge the sureties, must be for a definite period of time.”

*Beach vs. Zimmerman*, 106 Ind., 498.

To the same effect are:

*Hays vs. Wells*, 34 Md., 512.

*Morgan vs. Thompson*, 60 Ia., 280.

The testimony of the defendant that he was never notified of any default by the lessees (Rec., p. 14) is imma-



terial and of no avail, because the contract of surety expressly provides that no such notice shall be required (Rec., p. 13).

The whole evidence adduced on behalf of the defendant, even if it be true and unqualified by other evidence, presents no defense to this action. And when considered with the testimony on behalf of the plaintiff the purport and force of the defendant's evidence are all the weaker. The witness Marguerite White testified that she was the plaintiff's clerk and bookkeeper at the time of this lease; that most of the payments by the Strasburgers were made to her; that she frequently heard Mrs. Strasburger ask the plaintiff for indulgence; that the plaintiff refused to grant any indulgence, and said that the terms of the lease must be complied with (Rec., p. 15). Her testimony is uncontradicted.

The plaintiff testified that he never at any time made any promise of indulgence or the extension of time either to Mr. or Mrs. Strasburger, and that he told them he must insist upon the terms of the lease (Rec. p. 15). He also testified that at the second visit of Mr. Strasburger to his office, he told Strasburger that he would have no more to do with him, that he had showed himself to be unreliable and dishonest, that he must not come to his office again, that his wife was a lady, and that thereafter all payments must be made through Mrs. Strasburger (Rec., p. 15). This is uncontradicted. He also testified that he made no efforts to attach or levy a distress warrant for rent, because the hotel was rented furnished, and there was nothing belonging to the Strasburgers on which to levy, and they were financially irresponsible (Rec., p. 15). This evidence is uncontradicted.

Considering the whole evidence in this case, there is not one word of testimony to support the amended plea of

defense or that would justify a verdict for the defendant. As the court well said at the close of the trial:

“If I should let this case go to the jury, and the jury should return a verdict for the defendant, I should have to set the verdict aside, as being utterly contrary to the evidence.”

For the reasons set forth, the appellee submits that the court did not err in directing a verdict for the plaintiff, and that the judgment should be affirmed.

Respectfully submitted.

T. PERCY MYERS,  
WALTER H. ACKER,  
CLIFFORD V. CHURCH,  
*Attorneys for Appellee.*



